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February 10, 2003

Office of the Secretary  
Federal Communications Commission  
The Portals -- 445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

**RE: Authorization of "Interim" In Band On Channel (IBOC) Digital Radio  
(FCC Docket 99-325)**

Dear FCC Commissioners and FCC Staff:

I am contacting the FCC as the attorney for 38 different parties, both institutions and individuals, who have joined forces to petition the FCC for revocation or suspension of the Order authorizing radio broadcasts with In Band On Channel (IBOC) Digital Radio. We wish to note On The Record yet another development related to the IBOC Docket.

As you know, on October 11, 2002, the Commission issued an Order, in Docket 99-325, which authorized the "interim", essentially unregulated use of IBOC Digital Radio -- pending the promised development and issuance of technical "service rules" at an indefinite point in the future. On October 25, 2002, a coalition of 34 parties, led by THE AMHERST ALLIANCE and VIRGINIA CENTER FOR THE PUBLIC PRESS, filed a Petition For Reconsideration in Docket 99-325, urging the FCC to overturn or suspend the "interim" IBOC authorization Order.

Since then, 4 parties have joined the original Petition For Reconsideration retroactively, bringing the total number to 38. Further, John Pavlica, Jr. of Ohio, acting on his own initiative, has filed a Motion To Dismiss. In addition, we have filed a letter which notes that IBOC signal interference can disrupt the emerging nationwide Amber Alert program.

Today we note that Leonard Kahn, P.E., of Kahn Communications in New York City, filed a relevant Petition For Rulemaking on January 24, 2003. His Petition proposes new standards for the FCC's evaluation of new technology *and also proposes* a stay of the current IBOC authorization Order -- until such time as new technology standards can be developed, adopted and applied to the evaluation of IBOC Digital Radio.

Because Leonard Kahn's Petition was *not* filed in Docket 99-325, those FCC personnel who are working on Docket 99-325 may not be automatically be aware of the Petition.

This letter has been written, in part, to make certain that all Docket 99-325 staff at the FCC are indeed made aware of Mr. Kahn's Petition, which is currently posted on the FCC's Electronic Comment Filing System (ECFS) in the Document File for *PRM03MB*. Presumably, the Commission will assign a formal Docket Number to this Petition, and solicit public comments on it, within the very near future.

Our other motivation in writing this letter has been the desire to assure that any court which reviews Docket 99-325 -- when and if the Commission's *total* lack of response to our Petition For Reconsideration, and/or its silence on other filings in this Docket since October 11, is appealed -- will be in a position to take "judicial notice" of Mr. Kahn's attempt to revoke or suspend "interim" IBOC authorization by a separate procedural route. Since Mr. Kahn's Petition is *not* currently part of Docket 99-325, the reviewing court(s) will not necessarily be aware of its existence *unless* a letter which references that Petition has been placed in the 99-325 Document File. This letter achieves that result.

Respectfully submitted,

Don Schellhardt, Esquire

Representing 38 Parties To The October 25, 2002 Petition For Reconsideration In FCC  
Docket 99-325

CC: Leonard Kahn, P.E., New York, New York  
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